

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 30th day of August, 1996

SERVED September 19, 1996

**U.S.-THAILAND ALL-CARGO FREQUENCY
ALLOCATION PROCEEDING**

Docket OST 96-1496

**ORDER ISSUING CERTIFICATES AND
ALLOCATING FREQUENCIES**

SUMMARY

By this order, we award new certificate authority to Air Micronesia, Inc., and to Polar Air Cargo, Inc., to provide scheduled foreign air transportation of property and mail between the United States and Thailand. The order also allocates to Air Micronesia, Inc., Polar Air Cargo, Inc., Federal Express Corp., Northwest Airlines, Inc., and United Parcel Service Co. (UPS), frequencies as requested in their direct exhibits in the **U.S.-Thailand All-Cargo Frequency Allocation Proceeding**, Docket OST 96-1496 to operate their U.S.-Thailand services.

BACKGROUND

On May 8, 1996, the United States and the Kingdom of Thailand signed a new Air Transport Agreement, and a Memorandum of Understanding (MOU). With respect to all-cargo services, the Agreement provides for unlimited designations of carriers. The MOU addresses capacity, and provides for a total of twenty-four weekly round-trip all-cargo frequencies in the U.S.-Thailand market via intermediate points, with full Fifth Freedom traffic rights. However, no more than fourteen of the twenty-four weekly all-cargo frequencies may be operated via any single intermediate and/or beyond point.

Because Federal Express and Northwest had for some time been operating one and two all-cargo frequencies, respectively, there remained twenty-one all-cargo frequencies for allocation.

By notice served April 8, 1996, the Department notified all certificated U.S. air carriers of these opportunities in the United States-Thailand market and invited interested U.S. carriers to file applications for frequency allocation.

Air Micronesia, Federal Express, Northwest, Polar, and UPS submitted allocation applications for a total of twenty-five all-cargo frequencies - four more than those to which U.S. carriers are entitled to under the MOU.

Consequently, the Department, by Order 96-7-1, instituted the **U.S.-Thailand All-Cargo Frequency Allocation Proceeding**, to decide which U.S. carriers should be authorized and allocated frequencies to provide scheduled all-cargo service between the United States and Thailand.¹

On August 9, Air Micronesia, Federal Express, Northwest, Polar, and UPS submitted direct exhibits in the above referenced proceeding. In their respective direct exhibits, Air Micronesia requested 5 frequencies, Federal Express 5, Northwest 3, Polar 2, United Parcel Service 6 -- for a total of 21 frequencies, a cumulative request equal to the number of frequencies available for allocation.

On August 15, the parties filed a joint motion requesting the Department to issue an order terminating further procedures in this proceeding and granting the requested allocations and requisite underlying authority to the parties. The parties note that the current total number of frequencies requested for near-term use is the same number that are available under the U.S.-Thailand MOU. The parties also indicate consensus to accept the imposition of the Department's standard 90-day dormancy condition applicable to all frequencies awarded in this case. With respect to a start-up condition, however, the parties consensus is to request that services operated under the newly awarded frequencies begin on or before April 1, 1997, rather than the Department's usual practice of requiring the start-up of service in a 90 to 120-day time frame. The parties indicate that April 1, 1997 would be the deadline for commencement of service, rather than as the date on which a 90-day start-up period would begin to run.

DECISION

¹ By Notice To All Parties dated July 17, 1996, the Department modified, at the request of the parties, the procedural schedule set forth in Order 96-7-1, so that Direct Exhibits would be due August 9, Rebuttal Exhibits August 23, and Briefs September 6, 1996. Also, by Order 96-7-28, the Department modified, pursuant to a petition for clarification or reconsideration filed by Federal Express, certain technical aspects of the evidence request (Direct Exhibits) contained in Order 96-7-1.

We have decided to grant the joint parties' motion to terminate all further procedures in this proceeding and to allocate the 21 weekly all-cargo frequencies in the proceeding among the applicants as set forth in their respective direct exhibits.²

At the time we instituted this proceeding the combined requests of the five applicants exceeded the number of frequencies available for allocation. Based on the carriers' direct exhibits, however, the number of frequencies requested is within the number available. The applications, therefore, are no longer mutually exclusive and we may dispense with all further procedures and proceed to a final decision in this proceeding as requested by the applicants.

Based on the above, we allocate the 21 weekly frequencies available for U.S. carrier U.S.-Thailand all-cargo service as follows: Air Micronesia --5 weekly frequencies; Federal Express -- 5 weekly frequencies; Northwest -- 3 weekly frequencies; Polar Air Cargo --2 weekly frequencies ; and UPS -- 6 weekly frequencies. In addition, we will grant Polar Air Cargo and Air Micronesia the necessary underlying authority in the form of temporary experimental certificates to conduct their proposed operations. We find both carriers are fit to provide their proposed services. Both carriers have previously been found to be citizens of the United States and fit, willing, and able to provide scheduled foreign air transportation of property and mail.³ The certificates will be subject to the standard terms, conditions and limitations applicable to U.S. carrier certificates, with the exception of a standard start-up condition, as described below. The other applicants -- Federal Express, Northwest and UPS -- already hold the necessary underlying certificate authority to provide all-cargo service in the U.S.-Thailand market, and thus do not require additional underlying authority to provide their proposed services.⁴

TERMS, CONDITIONS AND LIMITATIONS

With respect to a start-up condition, we note the parties jointly request that a requirement be imposed for service to begin on or before April 1, 1997. Because the services can begin at any time after the effectiveness of this order, and because no party opposes this start-up date and/or seeks to use any additional opportunities, we will grant the parties' request that carriers operate their allocated frequencies no later

² On August 21, 1996, the Department orally contacted each of the parties and informed them that, pending Department action on their joint motion, all further procedural steps in the proceeding were suspended.

³ See e.g., Order 91-10-43 for Air Micronesia, Inc., and Order 96-6-12 for Polar Air Cargo. In addition, we find that award of these certificates will not constitute a "major regulatory action" under the Energy, Policy and Conservation Act of 1975, since grant of each certificate would not result in a near-term increase in annual fuel consumption in excess of 10 million gallons.

⁴ Order 85-2-38 for Federal Express (Route 473); Order 81-1-30 for Northwest (Route 129); Order 91-1-44 for UPS (Route 557).

than April 1, 1997. Frequencies not operated by that date will automatically expire and be available to the Department for reallocation.

We emphasize that the frequencies awarded here may not be held indefinitely if they are not being used. The opportunities here are limited and very valuable (all available all-cargo frequencies under the MOU are being allocated in this proceeding). It is not our intent that they be wasted. Therefore, we will impose our standard 90-day dormancy condition to the frequencies allocated to each party in this proceeding. Thus, if the frequencies allocated are not used for 90 days once the carrier begins service, the frequency allocations will expire automatically and the frequencies will revert to the Department for allocation so that they will be available for other carriers on an immediate basis should they seek to use them. For these reasons we also find that it is in the public interest to subject the one frequency currently in use by Federal Express, and the two frequencies currently in use by Northwest, to the same dormancy condition, thereby ensuring that all frequencies allocated for U.S.-Thailand all-cargo services will not be wasted. The dormancy period with respect to incumbent frequencies will begin upon the date of service of this order.

ACCORDINGLY,

1. We grant the August 15, 1996, joint motion filed by Air Micronesia, Inc., Federal Express Corp., Northwest Airlines, Inc., Polar Air Cargo, Inc., and United Parcel Service Co.;
2. We issue to Polar Air Cargo, Inc., in the form attached, a new temporary, experimental certificate of public convenience and necessity to provide scheduled air transportation of property and mail between the United States and Thailand;
3. We issue to Air Micronesia, Inc., in the form attached, a new temporary, experimental certificate of public convenience and necessity to provide scheduled air transportation of property and mail between the Guam and a point or points in Palau, the Philippines, and Thailand;
4. The certificates will be effective 30 days after the service date of this order, subject to the extension of the effective date in accordance with the provisions of the certificates;
5. We allocate the 21 available weekly roundtrip frequencies for scheduled all-cargo service in the U.S.-Thailand market as follows: Air Micronesia, Inc. 5; Federal Express Corp. 5; Northwest Airlines, Inc. 3; Polar Air Cargo, Inc. 2; and United Parcel Service Co. 6;
6. The frequencies allocated to each carrier in ordering paragraph 5, above, will be effective immediately and will expire: (a) April 1, 1997; provided, however, that if the holder inaugurates service using its allocated frequencies on or before that date, the frequencies allocated will continue in effect for one year from the date of service of this order; or (b) the 90th day after the holder fails to use the frequencies, whichever occurs

earlier; unless the Department earlier suspends, modifies or withdraws the frequency allocation;

7. We confirm the allocation of the three weekly all-cargo frequencies currently being operated by Federal Express Corp. (one frequency), and Northwest Airlines, Inc. (two frequencies), for scheduled all-cargo service in the U.S.-Thailand market, as indicated in the Department's Notice Inviting Applications dated April 8, 1996;

8. The frequencies allocated to Federal Express Corp. and Northwest Airlines, Inc. in ordering paragraph 7, above, will also be subject to a 90-day dormancy condition such that if Federal Express or Northwest fails to use its respective frequencies for a period of 90 days from the date of service of this order, they will revert back to the Department for reallocation;

9. To the extent requested, we grant all motions to file otherwise unauthorized documents in this proceeding;

10. To the extent not granted, we deny all motions and requests in this docket;

11. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order shall become effective upon the 61st day after its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁵ and

12. We will serve this order on Air Micronesia, Inc.; Federal Express Corp.; Northwest Airlines, Inc.; Polar Air Cargo, Inc.; United Parcel Service Co; the Ambassador of the Kingdom of Thailand in Washington, D.C.; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-200).

By:

Patrick V. Murphy
Deputy Assistant Secretary
for Aviation and International Affairs

⁵ This order was submitted for section 41307 review on August 30, 1996. On September 13, 1996 we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

(SEAL)

*An electronic version of this document is available
on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>*

Terms, Conditions, and Limitations

Air Micronesia, Inc. for Route 704

is authorized to engage in foreign air transportation of property and mail:

Between the terminal point Guam and a point or points
in Palau, the Philippines, and a point or points in
Thailand.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a substantial period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.

(11) The holder may combine services on this certificate with its services authorized on Route 170 and by other Department of Transportation exemptions, provided, that such operations are consistent with applicable international agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use limited entry route rights that are included in the holder's authority by virtue of the route integration authority granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This certificate shall become effective October 13, 1996, provided, however, that prior to the date on which the certificate would otherwise become effective, the Department, either on its own initiative or upon a timely filing of a petition for reconsideration of the order issuing this certificate, may by order or orders extend such effective date from time to time. It shall expire April 1, 1997, provided, however, that if the holder inaugurates service under this certificate on or before that date, the authorization to serve shall continue in effect until five years after its effective date unless the Department earlier suspends, modifies or deletes the authority.

Terms, Conditions, and Limitations

Polar Air Cargo, Inc. for Route 705

is authorized to engage in foreign air transportation of property and mail:

Between a point or points in the United States and a point or points in Thailand.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a substantial period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.

(11) The holder may combine services on this certificate with its services authorized on Route 651 and by other Department of Transportation exemptions, provided, that such operations are consistent with applicable international agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use limited entry route rights that are included in the holder's authority by virtue of the route integration authority granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This certificate shall become effective October 13, 1996, provided, however, that prior to the date on which the certificate would otherwise become effective, the Department, either on its own initiative or upon a timely filing of a petition for reconsideration of the order issuing this certificate, may by order or orders extend such effective date from time to time. It shall expire April 1, 1997, provided, however, that if the holder inaugurates service under this certificate on or before that date, the authorization to serve shall continue in effect until five years after its effective date unless the Department earlier suspends, modifies or deletes the authority.